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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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| ELIZABETH ANN HEIDHUES,<br>Plaintiff and Appellant,<br>v.<br>ANTOINE PIRON,<br>Defendant and Respondent. | A161857<br><br>(City & County of San Francisco Super. Ct. No. CCH-20-582485) |

Elizabeth Ann Heidhues appeals after the trial court denied her request for an elder abuse restraining order against her neighbor, Antoine Piron, under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.; the Elder Abuse Act).[1] We affirm the judgment.[2]

## FACTUAL AND PROCEDURAL BACKGROUND

Heidhues and Piron live next door to each other, with a narrow strip of land between their houses. Over the course of several years, conflict

[1] All undesignated statutory references are to the Welfare and Institutions Code.

[2] We will refer to the parties to this action by their last names and to their spouses, Lee Heidhues and Ciara Piron, by their first names, intending no disrespect.

developed between their households over various matters, most particularly Heidhues's camellia bush, the branches of which grow over a paved walkway on the strip of land, apparently on Piron's property, that Piron uses to roll out his trash bins.[3]

## I. The Pirons' Restraining Order Against Heidhues

Piron and his wife, Ciara, obtained a civil harassment restraining order against Heidhues on June 1, 2018 based on evidence she photographed them without permission, wrote a hostile note on the sidewalk in front of the Pirons' house, rang their doorbell at 6:20 in the morning, and blocked the path they used to take their garbage cans in and out.[4] Invited to tell her side of the story, Heidhues denied "trap[ping]" Ciara in the alley; she acknowledged she had taken video recordings of Piron taking his garbage cans in and out because he had been "hacking" her camellia bush and of the Pirons' son because he had been making "poppers" in the backyard that frightened Heidhues's dogs; she admitted and apologized for writing the note on the sidewalk; and she accused Piron of taking holy cards she had put on her camellia bush to "bless and protect" it. Piron denied taking the cards, and he acknowledged he had cut her camellia bush because it was on his property and the branches were blocking the pathway to take out his trash. The trial court stated that the restraining order was without prejudice to Heidhues's own right to seek a restraining order.

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[3] There is some dispute about the ownership of the portion of the strip of land closest to the home owned by Heidhues and her husband, apparently being litigated in a separate action. For purposes of the current action, the trial court accepted that the pathway belongs to the Pirons.

[4] We grant Heidhues's request for judicial notice, filed June 4, 2021, of the transcript of the June 1, 2018 hearing in *Piron v. Heidhues et al.* (Super. Ct. S.F. City & County, 2018, No. CCH-18-580399).

## B. The Present Action

### *The Petition*

Heidhues, then 70 years of age, filed her request for an elder abuse restraining order on January 14, 2020. She alleged Piron assaulted her with long-handled pruning shears at his bathroom window on December 28, 2019. According to the petition, Heidhues heard a noise outside her bathroom window, opened the window, and saw Piron on a ladder, snipping branches on her property. He made a "frightening face" and "snarled" at her by lifting his upper lip and baring his teeth, then attacked her by hitting her hands with the blades of his open "loppers" when she tried to take a picture of his ladder on her property. He jabbed at her until he knocked her phone out of her hands, then stood over the phone when it fell onto the ground.

Heidhues's petition included allegations about Piron's behavior before the December 28 incident. Piron carried a sharp knife as he trespassed on her property and he used his knife to "hack away" at her landscaping where her property bordered his. On one occasion, as Heidhues stood on her front stairs to watch him, he spoke threateningly to her. Piron "surrounded [the Heidhues's] home with intrusive surveillance cameras to stalk us 24 hours a day," and installed floodlights that shone into her bedroom window and interrupted her sleep. He changed the lock to a gate on Heidhues's property and did not share the keys with her, depriving her of access to her sewage pipes and clean-out, telephone and internet hook-ups, and venting pipes.

Heidhues's petition detailed a number of incidents: In June 2017, she went outside to watch Piron as he rolled out his garbage cans and he thrust his middle finger in her face, told her to get out of his way, and broke a branch off her landscaping. In October 2017, when she was in her back yard, she heard the sounds of bottles smashing in the Pirons' backyard; she looked

over at their yard, and after she turned away Piron said loudly, " 'Got a GOOD look, you OLD goat!' " and stared at her over the fence. Also in late 2017, Piron hacked healthy branches from the Heidhues's landscaping, Ciara Piron tried to prevent PG&E crews from getting access to Heidhues's meter, and Piron sent an email to Lee Heidhues questioning his need to have a technician repair their internet line. In January 2018, Piron left broken glass and can lids at the bottom of the Heidhues's front stairs, he "bashed" into her camellia bush with his body and his garbage cans, and he lifted a garbage can in the air and banged it down "in a show of brute force."

***Temporary Restraining Order***

The trial court issued a temporary restraining order requiring Piron to stay at least 50 yards from Heidhues and three yards away while in his home, to turn off the floodlights from 10:00 p.m. until 7:00 a.m., and to give Heidhues keys to the gate that provided access to her utility lines and boxes.

Piron requested a modification of the temporary restraining order, pointing out that Heidhues was subject to an order restraining her from harassing him and Ciara. He alleged she was the defendant in a misdemeanor action for violating the restraining order and was subject to an arrest warrant for stalking them in violation of the restraining order. In his request, he denied (as "risibly false") Heidhues's claim that he assaulted her with pruning shears and said he and Ciara had always promptly given workers access to Heidhues's utilities on demand. As to the outdoor light, he averred it was directed toward the ground, it was mounted at an elevation below that of the second-floor bedroom window, it used a timer that shut off after a short interval, and it assisted the Pirons in taking out their garbage at night and deterring prowlers and transients who had used the side of the home to urinate.

The trial court modified the temporary restraining order to eliminate the requirement that Piron share the keys to the gate and it ordered him to move the outdoor lights so they did not shine directly into Heidhues's windows and to set them to remain lit for the shortest possible duration.

***Piron's Response***

Piron filed a response to Heidhues's request for an elder abuse restraining order prior to the July 2020 hearing. He attached evidence that a police officer had prepared an affidavit in support of a warrant to arrest Heidhues for violating the restraining order; that the police officer who investigated the alleged attack with pruning shears in December 2019 took no action; that a year and a half before that incident, in April 2018, Heidhues had been arrested for violating the restraining order against her by leaning out of the same window wielding her own pair of pruning shears and cutting Piron's trees; that after Piron accidentally dropped glass and can lids when he snagged his trash can on a bush at night during a rainstorm, Heidhues left the debris on his doorstep the next morning with a note accusing him of threatening her; that Heidhues filmed him as he took out the trash on his own property; that she set up a display in a window facing the Pirons' home with a Tarot death card and similar images; that Piron had replaced the disputed fence and gate at his own expense by moving it closer to his home, abating any concern about Heidhues lacking access to the side of her home; that Heidhues had surveillance cameras installed to monitor Piron's residence and took pictures through his window, where his child was playing; that the outside light allowed Piron's surveillance camera to capture images of Heidhues brandishing a blade at the camera and raising her middle finger and of her husband displaying a Star of David and a homemade sign reading, " 'Welcome to Ciara's P.O.W. Camp' "; that Piron had complied with the

temporary restraining order by lowering the height of the outdoor light; and that Heidhues was arrested for violating the restraining order against him for photographing him as he removed the flood light and screaming at him. As will be discussed below, Piron did not testify at the hearing on Heidhues's petition and his attorney did not cross-examine Heidhues's witnesses, and his exhibits were not admitted into evidence.

***Testimony at Hearing on Petition***

The hearing on Heidhues's request for an elder abuse restraining order took place on July 27, 2020.

As to the December 28, 2019 incident, Heidhues testified she heard a noise outside her bathroom window, opened the window, and saw Piron's face at eye level as he stood on a ladder snipping branches on her property. Piron was holding long-handled gardening shears, or "loppers." He snarled, lifted his lip, and bared his teeth at her. Heidhues screamed. After he climbed down from the ladder, she took a picture of him with her cell phone camera. Piron reached up and hit her wrists and hands with the open gardening shears. Heidhues let go of her phone, which fell to the ground. After she screamed, he picked up the phone and gave it to her. She continued to scream and ran out of the bathroom.

Heidhues testified that the camellia bush was on her property, next to the path Piron used to get his garbage in and out, that it had strong sentimental value to her, and that Piron had "vandalized" it by bashing into it with his trash cans and body. One day in June 2017, she was on her front stairs watching Piron take out his garbage cans. He thrust his finger in her face, snapped a branch off the bush, and muttered, " 'Get out of my way.' " On two occasions she saw him break branches off the bush with his hands. Several times she put signs containing notes, a picture, and prayer cards on

the bush, and each time she did so she found the next day that the signs had been removed. In an email in January 2018, Piron acknowledged he had been cutting back the camellia bush.

On the night of January 8, 2018, Heidhues heard glass shattering outside when Piron was rolling out his garbage can, and the next morning she saw broken glass and sharp can lids in front of her stairs. The following week she went out to watch as Piron was taking out his garbage, and he bashed into the camellia bush three times, breaking branches, and he said, " 'Not now. I don't have the time. Soon,' " which she took as a threat. As he took his last trash can out to the curb, he lifted it in the air and smashed it down onto the curb, frightening her. On another day in January 2018, she heard her dog bark and glass crashing, and she looked over the fence to Piron's property. She went downstairs and into her yard, and as her back was turned Piron said, " 'Getting a good look, you old goat?' "

The day after the February 7, 2020 hearing on the temporary restraining order, Heidhues heard work being done on Piron's house. She went outside to her porch to look and saw flood lights being moved. Piron's hand was sticking out of the camellia bush holding a cell phone, apparently recording her, and she took two photographs of him. Ciara Piron then accused her of harassment, and Heidhues called the police. Heidhues was arrested for violating the restraining order against her. The Pirons spoke with the police officer and laughed as she was taken away.

Lee Heidhues testified as well. According to him, the Pirons' home had security cameras in the alleyway and in front of the house. The Heidhueses also had a surveillance camera.

Lee testified he made many requests through third parties for the Pirons to take down their flood lights. In April 2018, when the lights outside

the Pirons' house had been on all night, Lee knocked on their door at 6:15 in the morning and asked Piron to turn them off. Piron replied, " 'Fuck you,' " said his son was sleeping, and said he would call the police. The lights were moved only after the February 7, 2020 court order.

According to Lee, in October 2017, after a card was removed from the camellia bush, he went to the Pirons' door and asked Piron to return the card. Piron replied, " 'No, I won't,' " and went back into his house. The same month, Lee knocked on the Pirons' door and said, " 'I do not like the misogynistic way that you are treating my wife,' " by which he meant his rude hand gesture and calling her an " 'old goat.' " Piron replied, " 'I don't give a shit.' " In another conversation Piron told Lee, " 'That's the least she deserves.' "

***The Trial Court's Rulings***

The trial court noted that it had presided in February 2020 over a "partial hearing," at which it amended the temporary restraining order and that it had deferred a decision on whether to grant Heidhues's request for a restraining order. It indicated it was taking into account the evidence at both hearings. The record currently before us does not include a transcript of the February 7 hearing, and we cannot determine what evidence was admitted.

At the end of Heidhues's direct examination, the court suggested to Piron's counsel that he waive cross-examination as unnecessary because Heidhues had not met her burden of proof. After Lee testified and Heidhues's counsel indicated he had no further witnesses, the trial court again asked Piron's counsel to waive cross-examination.

The trial court denied Heidhues's request for a restraining order, stating as it did so that most of the issues raised at the hearing had already been litigated in connection with the Pirons' earlier request for a restraining

order and that the events since then did not amount to harassment. The court explained that the Pirons had a right to place cameras on their own property; that the issue with the camellia bush had been "exaggerated" and that Heidhues had seen Piron damage the bush purposefully on only two or three occasions; that the evidence did not show how the broken glass got onto the front of the Heidhues's stairs; and that the Heidhueses were "completely overreacting to this situation." The court concluded Heidhues had not met her burden, so there was no need for Piron to present any witnesses.

Judgment was entered on December 18, 2020, and this timely appeal ensued.

## DISCUSSION

### I. Standard of Review

The Elder Abuse Act authorizes issuance of a protective order for an elder who has suffered abuse as defined in section 15610.07. (§ 15657.03, subd. (a)(1).) Under that provision, abuse of an elder means, inter alia, "[p]hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering." (§ 15610.07, subd. (a)(1).) Physical abuse includes assault as defined by Penal Code, section 240, and battery as defined by Penal Code section 242. (§ 15610.63, subds. (a), (b).) " 'Mental suffering,' " in turn, means "fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult." (§ 15610.53.) Under this broad definition, " 'treatment' that caused [an elder] to experience the 'serious emotional distress that is brought about by . . .

intimidating behavior [or] harassment" may constitute elder abuse. (See *Darrin v. Miller* (2019) 32 Cal.App.5th 450, 454.) An order may be issued "if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult." (§ 15657.03, subd. (c).) There need not be a special relationship between the elder and the person restrained, such as a custodial relationship, for an order to be proper. (*Darrin*, at p. 454; see *Tanguilig v. Valdez* (2019) 36 Cal.App.5th 514 (*Tanguilig*) [restraining order against neighbor]; *Gordon B. v. Gomez* (2018) 22 Cal.App.5th 92 (*Gordon B.*) [same].)

We review an order granting or denying a request for an elder abuse protective order for abuse of discretion, and we consider de novo whether the trial court applied the correct legal standards in exercising its discretion. (*Gordon B.*, *supra*, 22 Cal.App.5th at pp. 97–98.) When a protective order is granted, we review the factual findings necessary to support it for substantial evidence, resolving all conflicts in favor of the prevailing party and indulging "all legitimate and reasonable inferences in favor of upholding the trial court's findings." (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137–1138, *Gordon B.*, at pp. 97–98.)

Heidhues argues we should also apply the substantial evidence test to factual findings when the trial court *denies* a protective order. But here, the trial court made clear it found Heidhues failed to meet her burden of proof. In such a circumstance, the question before us is not whether substantial evidence supports the trial court's factual findings, but whether the evidence, viewed most favorably to Piron, *compels* factual findings in Heidhues's favor. As explained by our colleagues in Division Two of this court, " 'In a case where the trier of fact has determined that the party with the burden of proof did not carry its burden and that party appeals, "it is misleading to

characterize the failure-of-proof issue as whether substantial evidence supports the judgment." [Citations.] Instead, "where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence *compels a finding in favor of the appellant as a matter of law*." [Citation.] Specifically, we ask "whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " ' [Citation.] This is 'an onerous standard' [citation] and one that is 'almost impossible' for a losing plaintiff to meet, because unless the trier of fact made specific factual findings in favor of the losing plaintiff, we presume the trier of fact concluded that 'plaintiff's evidence lacks sufficient weight and credibility to carry the burden of proof.' " (*Estes v. Eaton Corp.* (2020) 51 Cal.App.5th 636, 651 (*Estes*), citing *Ajaxo, Inc. v. E*Trade Financial Corp.* (2020) 48 Cal.App.5th 129, 163–164 and *Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1486.) Such is the case here: after hearing Heidhues's case, the trial court ruled she did not carry her evidentiary burden. We conclude the standard set forth in *Estes* is the correct one when reviewing the factual underpinnings of the trial court's ruling.

**II. Evidence of Elder Abuse**

Heidhues contends the trial court abused its discretion by disregarding uncontradicted evidence establishing Piron's actions toward her constituted elder abuse.

She argues first that the court improperly disregarded the evidence that Piron committed battery against her on December 28, 2019 by hitting her with the pruning shears, an act that falls within the Elder Abuse Act's definition of physical abuse. (§ 15610.63, subd. (b).) We reject this

contention. First, the record indicates the court *did* consider the evidence she offered, as shown by its statement that the relevant issue was not whether Piron was on Heidhues's property or his own but whether he assaulted her.

Nor are we persuaded the evidence compels a conclusion Piron committed battery against Heidhues. She points out correctly that the only evidence about the incident offered at the July 27, 2020 hearing was her testimony that Piron hit her with the pruning shears, and Piron did not testify to contradict her. And, she argues, his response to the restraining order request did not directly contradict her version of events, stating only that he "did not use pruning shears as a weapon." The record does not contain a transcript of the February 7, 2020 hearing on the temporary restraining order, and we are unable to ascertain whether Piron testified then to deny Heidhues's claims. But even assuming the trial court did not hear Piron's side of the story at the earlier hearing, it was not required to believe Heidhues's testimony about the alleged assault. A finder of fact may disbelieve even uncontradicted evidence. (*Bookout v. State of California ex rel. Dept. of Transportation*, *supra*, 186 Cal.App.4th at p. 1487.) Rather, to meet the " 'failure-of-proof' " standard set out in *Estes v. Eaton Corp.*, the appellant's evidence must not only be " ' " 'uncontradicted and unimpeached' " ' " but *also* " ' " 'of such character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " ' " (*Estes*, *supra*, 51 Cal.App.5th at p. 651.)

Aside from the general statement that the events Heidhues complained about since June 2018 did not amount to harassment, the trial court made no factual finding about the December 28 incident. In the absence of a specific finding, we presume that it found Heidhues's testimony that Piron assaulted her with pruning shears not credible. (*Estes*, *supra*, 51 Cal.App.5th at

p. 651.) We apply an "extremely deferential review" to credibility determinations, bearing in mind that the trier of fact may consider in determining credibility " ' "their interest in the result of the case, their motives, the manner in which they testify, and the contradictions appearing in the evidence." ' " (*Jennifer K. v. Shane K.* (2020) 47 Cal.App.5th 558, 579.) In the absence of any physical or other evidence corroborating Heidhues's claim that Piron hit her hands with pruning shears, this record supplies no basis for us to overturn the trial court's determination of Heidhues's credibility or the weight to be given her version of events.

Heidhues also argues the trial court improperly disregarded uncontradicted evidence of other instances of Piron's behavior in 2017 and 2018. She points to *Tanguilig*, which upheld an elder abuse restraining order based on evidence a neighbor had blocked the elder's driveway with his trash cans and sprayed him with a garden hose while he was doing yard work, causing him mental anguish and emotional distress. (*Tanguilig*, *supra*, 36 Cal.App.5th at pp. 518–519, 526–528.) She also relies on *Bookout v. Nielson*, which concluded substantial evidence supported the trial court's findings that a housemate's acts of shaking his fists at an elder, threatening to provoke her until she had a stroke and died, trying to tape-record her without consent, locking her out of her residence, interfering with her access to her personal property, and forcing her to remain in her bedroom, could fairly be characterized as "abusive, threatening and harassing behavior resulting in mental suffering and emotional harm." (*Bookout v. Nielsen*, *supra*, 155 Cal.App.4th at pp. 1134, 1141.) These authorities, she contends, show that Piron's behavior in calling her an "old goat," making a rude hand gesture, threatening her by saying "Not now. I don't have the time. Soon," smashing his trash can down, installing a camera surveillance system, denying her

access to the gate that led to the side of her house, and harming her camellia bush constituted elder abuse.

We first note that the standard of review favored the protected party in both *Tanguilig* and *Bookout v. Nielsen*—that is, the relevant question was whether substantial evidence supported the trial court issuing a restraining order. Here, on the other hand, we consider whether the evidence *compelled* the trial court to issue an order or whether the court abused its discretion in declining to do so. Viewing the record in the light most favorable to Piron, as we must (*Bookout v. Nielsen*, *supra*, 155 Cal.App.4th at pp. 1137–1138), we see no grounds to disturb the trial court's ruling. Heidhues does not challenge the finding that the pathway that the camellia bush partially obstructed, which Piron used to move his trash bins, was on the Pirons' property. Nor does she show that the outdoor lights shone into her bedroom after Piron moved them or that he acted improperly in having surveillance cameras; indeed, Heidhues's home also had a surveillance camera. And Heidhues's own testimony showed that on the occasions Piron made insulting comments or gestures, she had been monitoring his activities by coming outside to watch as he took out the trash or by looking over the fence into his yard when she heard a noise. The court could reasonably conclude Piron's hostile reactions to her intrusions on his daily life and his family's privacy did not constitute abuse for purposes of the Elder Abuse Act. Even without a record of the evidence admitted at the February 7, 2020 hearing, we conclude the trial court was well within its discretion to decline to grant a restraining order on this basis.

## III. Events Before June 2018

Heidhues also contends the trial court erred as a matter of law by applying principles of collateral estoppel to bar consideration of events before June 2018, when the Pirons obtained their restraining order against her.

***Background***

When the trial court issued the restraining order protecting the Pirons from Heidhues in June 2018, it expressly stated that the order was without prejudice to Heidhues's right to seek a restraining order of her own. Heidhues did not do so until more than a year and a half later. When she brought her request in January 2020, she alleged not only that Piron attacked her with pruning shears on December 28, 2019, but also that he committed other hostile acts, describing alleged events beginning from September 2015, when the Pirons installed their floodlights.

At the outset of the July 27, 2020 hearing on Heidhues's request, the court stated that it was interested in events after the original restraining order was issued, stating, "Anything that happened prior to June 1, 2018, essentially, has been litigated." As Heidhues was about to testify, the court advised her counsel, "what I'm particularly focused on are things that have happened since June 2018; in other words, since the restraining order was issued against your client," and that "to be frank, what I'll weigh most heavily or the heaviest are things that have happened most recently going backwards in time."

Before rendering its ruling, the trial court stated, "To Mr. and Mrs. Heidhues, most of the issues that you're complaining about today have already been litigated. This court and a separate judge issued an order—a restraining order in [June] of 2018 where all of these issues should have been addressed. . . . All the issues regarding the arrest, and the flood lights, and

the trimming of the bush and all of those things should have been addressed. [¶] You're essentially asking this court to relitigate those issues, and I'm not going to. [¶] Number two, with regard to the things that you're complaining about since then, I don't think that they amount to harassment. So I'm not going to issue a restraining order."

The court went on to explain that the Pirons had placed a camera on their own property, that there was no evidence how the broken glass got onto the ground but that it could happen innocently while taking trash out, and that the issue with the bush had been "exaggerated." After further argument, the court stated its view that the Heidhueses were "completely overreacting to this situation" and that "[t]hey do not have even anywhere near a strong case to ask for a restraining order." Heidhues's counsel told the court that they did not have the opportunity to raise all their contentions at the hearing on the 2018 restraining order because they were merely defending themselves against the Pirons' allegations, and the court responded, "You have presented two witnesses that you [*sic*] did not meet your burden, in my opinion."

***Analysis***

Heidhues argues that in making its ruling, the trial court improperly applied principles of collateral estoppel. Collateral estoppel, or issue preclusion, bars relitigation of issues argued and decided in prior proceedings. (*Estate of Redfield* (2011) 193 Cal.App.4th 1526, 1534.) The doctrine is applied only if the precluded issue is identical to that decided in the earlier proceeding, it was actually litigated in the former proceeding, it was necessarily decided, the earlier decision is final and on merits, and the party sought to be precluded was a party (or in privity with a party) to the earlier proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 340.)

And, for reliance on this doctrine to be proper, the party must have had a "full and fair opportunity to litigate the issue in the prior proceeding." (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.) Heidhues contends these requirements are not met because the issues in the two proceedings were not identical, the questions at issue now were not actually litigated and decided in the 2018 hearing, and Heidhues did not have a full and fair opportunity to litigate Piron's behavior in 2018.

Heidhues's claim is weak because the trial court did not state it was relying on principles of collateral estoppel in making its ruling. And it did not preclude consideration of events before June 2018, stating that it would be "particularly focused" on events after that date. But, even assuming the court erred, we do not reverse unless the appellant has shown prejudice, that is, that a different result would have been probable in the absence of the error. (Code Civ. Proc, § 475; *Scheenstra v. California Dairies, Inc.* (2013) 213 Cal.App.4th 370, 403.)

Heidhues has not met her burden here. Much of the testimony at the hearing was based on events before June 2018. These included Piron calling Heidhues an "old goat," thrusting a finger in her face, and damaging her camellia bush, and the removal of the signs on the bush. The court made clear that it understood the saga of the camellia bush and was unimpressed and that it thought Heidhues was "completely overreacting" to the situation. Heidhues's own testimony showed that Piron's rudeness and open hostility toward her in the time before mid-2018 was precipitated by her going outside either to watch as he took out his trash or looking into his back yard to find out what was happening there. The use of the term "old goat" came in the latter context. While we certainly do not condone disparaging a person's age, it strains credulity to suggest that in this context Piron's petty insult

amounted to elder abuse or that, absent the legal error Heidhues claims, the court would have so found. And, significantly, the trial court did not consider the case a close one, saying it was not "even anywhere near a strong case to ask for a restraining order."

The purpose of a restraining order is to "prevent[] a recurrence of abuse" (§ 15657.03, subd. (c)), and the court made clear that, even as to events after June 2018, it would give more weight to those that were more recent in deciding whether to issue such an order. Heidhues has not shown this was improper, and there is no basis to conclude the trial court would have exercised its discretion differently if it had expressly considered events that took place more than two years before the July 27, 2020 hearing.

**DISPOSITION**

The judgment is affirmed. Piron shall recover his costs on appeal.

TUCHER, P.J.

WE CONCUR:

PETROU, J.
RODRÍGUEZ, J.